1951 **File No.** O Wireless Telegraphy/51

Legal Department
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Subject:— Opinions under the Indian Wireless Telegraphy Act, 1933.

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C O N T E N T S.

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Sr. No.	R.I.No./ C.No.	Subject	Pages.
		Indian Wireless Telegraphy Act, 1933.	
1	14991 20-9-51.	Sec. 6(1A) and 7 whether in respect of an office under Sec 6(1A) of the Act, the offence of possessing a wireless transmitter without a licence, a Police Officer can search the suspected premises without a formal complaint-	1-4

Legal Department.

Wireless Telegraphy Act, 1933(No. XIII of 1933) - Sec. 6(1A) and

The question for consideration is whether in respect of an offence under section 6(1A) of the Indian Wireless Telegraphy Act,1933 (Act XVII of 1933) namely, the offence of possessing a wireless transmitter without a licence, a Police Officer can search the suspected premises without a formal complaint.

2. The offence under section 6(1A) is punishable with imprisonment which may extend to 3 years or with fine which may extend to Rs. 1000/- or with both. Having regard to the term of substantive sentence which could be inflicted for such offence the offence is a cognizable offence (see section 4(f) and the items under the heading "Offences against other Laws" in Schedule II of to the Criminal Procedure Code). Therefore, a formal complaint is not necessary for the investigation into that offence.

3. The position in respect of search is this: In respect of a cognizable offence a police officer in charge of the police station or making investigation has certain powers of search, for the purposes of investigation. The circumstances under which those powers can be exercised without a formal warrant are given in section 165(1) of the Criminal Procedure Code. The provisions of the Criminal Procedure Code relating to investigation, inquiry, etc., apply to all offences under any law subject to any special provision having been made by the enactment which creates the offence. Therefore, in respect of an offence of possession of a wireless transmitter without a licence the provisions of section 165(1) would have applied

applied in the Indian Wireless Telegraph Act, 1933, as amended by India Act XXXI of 1939, there is a special provision in section 7 relating to search. it reads as follows:-

"7. Power of search-. Any Officer specially empowered by the Central Government in this behalf may search any building, vessel or place in which he has reason to believe that any wireless Telegraphy appratus, in respect of which an offence punishable under section 6 has been committed, is kept or concealed, and take possession thereof."

Now this provision of law applied to "any wireless Telegraphy apparatus". It will, however, ~~are-the-genus-of-which~~ be apparent from a consideration of the several provisions of the Act that the words "Wireless telegraphy apparatus" are the genus of which "Wireless transmitter isa species. The definition of the words "Wireless Telegraphy Apparatus " in section 2 is wide enough to include a wireless transmitter, Section 3 prohibits the possession of a wireless telegraphy apparatus except under and in accordance with the lecence issued under the Act. It does not specifically mention "wireless transmitter" because a wireless transmitter is apparently included in a "wireless telegraphy apparatus". If it were not so included the possession of a wireless transmitter would not be an offence but it is treated as an offence under section 6(1A). The wording of section 6(1) also leads to the same conclusion. It makes it an offence to possess any wireless telegraphy apparatus other than a wireless transmitter in contravention of theprovisions of section 3. It is clear, therefore, that the words "Wireless Telegraphy Apparatus" used in section 3 include a "wir less transmitter". Similarly, the

Similarly, the same words as used in section 7 would include a wireless transmitter. That being so, the provisions of section 7 relating to search would apply to a wireless transmitter and the search cannot be made except by an officer specially empowered by the Central Government in that behalf.

Additional Secretary to Government.

U.R. to P. & S.D. No. 14991., Dated the 20th Sept., 1951.

SSM / 29/6/56.